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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ANDREW M. STEIN et al.,

Plaintiffs and Respondents,

v.

ERNEST VOIGHT,

Defendant and Appellant.

G045756

(Super. Ct. No. 30-2008-00106498)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,  
Gregory Munoz, Judge. Motion to take additional evidence on appeal. Judgment  
affirmed. Motion denied.

Ernest Voight, in pro. per., for Defendant and Appellant.

Donald H. Segretti for Plaintiffs and Respondents.

Ernest Voight appeals from a judgment holding him liable, on a theory of quantum meruit, for the value of attorney services rendered to him by Andrew M. Stein and Jerry L. Steering.

Voight argues the trial court erred because (1) Stein and Steering's retainer agreement is void as no fully executed copy was ever provided to him; (2) the attorneys' billing records are inadequate to support the time they claim to have spent on his behalf, and at least one entry is fraudulent; (3) Stein and Steering abandoned him and the court's Statement of Decision mischaracterizes the termination of the attorney-client relationship; (4) the retainer agreement did not authorize Stein and Steering to condition their representation of him on obtaining a continuance of his scheduled trial; and (5) Stein and Steering spent a portion of the funds he entrusted to them on unauthorized expenses. Voight also claims the trial court erred in its pretrial discovery rulings and by refusing to allow him to introduce an exhibit from the non-binding fee arbitration into evidence at trial.

Additionally, Voight has filed a motion asking this court to take additional evidence on appeal pursuant to Code of Civil Procedure section 909. We deny that motion.

And we affirm the judgment. Voight's challenges to the validity and terms of the retainer agreement are unpersuasive because the judgment was grounded on a claim of quantum meruit, rather than an attempt to enforce the retainer agreement. Moreover, the attorneys' billing records were adequately supported by their testimony at trial, and the evidence, taken as a whole, was sufficient to support the trial court's assessment of the value of services rendered. The evidence also supported the trial court's determination that it was Voight, rather than Stein and Steering, who chose to terminate the professional relationship, and that Voight authorized the specific expenditures he challenges on appeal. And finally, Voight's assertion the trial court erred by denying his discovery motions and rejecting his trial exhibit is cryptic at best,

and it is unsupported by any citations to either the record or pertinent legal authority. Further, Voight fails to explain how those alleged errors prejudiced his defense of the fee claims. We consequently deem that assertion waived.<sup>1</sup>

### FACTS

In November 2005, Voight contacted Steering, whose name he found in the Yellow Pages, to discuss problems he had encountered with the jailers at the Orange County Jail. Steering, who testified he specialized in police misconduct and criminal matters, visited Voight in the jail only after informing him he billed his time at \$300 per hour and did not make jail visits for free. Steering also told Voight his normal retainer was \$50,000.

However, when Steering determined the criminal charges pending against Voight were more serious than he expected, he informed Voight that a different retainer agreement with a larger fee would be necessary to secure representation in his criminal case. He also determined that a “much more qualified criminal defense attorney should be brought in to try the case.” He suggested Stein to fill that role.

On January 29, 2006, Voight and Steering signed a retainer agreement at the jail, specifying Voight would retain both attorneys for a flat fee of \$100,000, plus costs. Stein was not present at the meeting, but later signed a copy of the agreement.

The retainer agreement specified the two attorneys would provide legal services in his criminal case “through all Superior Court proceedings, through and including the first trial . . . .” It further provided that in addition to the \$100,000 flat fee retainer, Voight would be liable for costs, including the costs of expert witnesses and investigators. With respect to the latter, the agreement specified Voight

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Just before oral argument, Voight provided this court with an “Appellant’s Oral Argument Brief.” As Stein and Steering had no objection to the filing of that brief, we accepted it and it has been filed.

“represents that he will be able to come-up with at least several thousand dollars for private investigation services.”

On February 3, 2006, Stein and Steering both appeared at a hearing in Voight’s pending criminal case, along with Voight’s then counsel, Jonathan Mandel. Stein and Steering informed the court they had been retained by Voight and wished to substitute in as his counsel, but could not be ready to represent him at the trial which was then scheduled for March 20. The trial court expressed concern that Voight’s decision to change counsel—for the third time—was an effort to manipulate the system by forcing a delay in trial. Consequently, the court relieved Mandel as Voight’s counsel, but declined to substitute Stein and Steering in his place without a commitment they could be ready by the scheduled trial date. Instead, the court scheduled a hearing before a different judge on February 6 to consider whether Steering and Stein should be substituted in as Voight’s counsel in light of the pending trial date. In the meantime, Voight was allowed to represent himself in pro. per.

At the February 6 hearing, the trial court ruled Steering and Stein would have to be ready for trial on March 20 if they substituted in as Voight’s counsel, refusing to continue the trial. The attorneys reiterated they could not be ready for trial on such short notice, and after discussing the issue with Voight, they decided to petition this court for a writ of mandate compelling the trial court to continue the trial so they would have sufficient time to prepare.

Stein and Steering then engaged an appellate attorney, Robert Gerstein, to file the writ petition on Voight’s behalf, and Stein paid him \$10,000 of Voight’s retainer funds to do so. Stein testified Voight consented to the payment. The petition was filed in mid-March 2006, and a temporary stay was issued the next day.

In the meantime, some problems were already starting to develop between Voight and the attorneys. On February 13, Voight wrote to Steering about his unhappiness with the investigator they had arranged for him to retain, and informed

Steering he would be renegotiating the contract he had entered into with the investigator only four days earlier.

And in that same February 13 letter, Voight made clear that despite his status as a self-represented defendant in his criminal case, he expected Stein and Steering to continue working with him on the case. He specifically acknowledged Stein was working on obtaining a writ to delay his trial. He also mentioned Stein was required to have motions filed no later than February 24, and that he wanted to meet with Steering “immediately to go over this . . . .” He told Steering that “[i]f you cannot meet my grave time line than [sic] I will have to make other arrangements to have motions written on my behalf” by a different attorney, and that “[f]inancial arrangements will have to be met quickly as not to interfere with whatever cases or motions you are working on for your other cases, respectfully.”

And finally, Voight expressed thanks to Steering for his “diligent effort to get Mandel off my back. Because of the negligence he has done on my case, I want you to file a malpractice suit against him in my behalf or I can pay you to file the papers for me as a ghost writer”

But in mid-April, Voight informed Steering by letter that their retainer agreement was “void” and asked that it be torn up. He claimed the written demand was merely a confirmation of what he had previously demanded orally. In the same letter, Voight complained he had asked 10 times for “a billing that you stipulated [to] in the agreement,” but had received only excuses. He also complained of “continued billing” despite the fact “you are not attorney of record.”

By the time Voight declared the parties’ retainer agreement void, he had paid \$91,000 toward the \$100,000 flat fee—\$60,000 to Steering and \$31,000 to Stein. Steering thereafter refunded \$38,932.08 to Voight, and billed him for \$22,072.42 in fees (calculated at \$300 per hour) and costs. That reflected a balance of \$1,004.50 owing to Steering. Stein kept the entire \$31,000 retainer paid to him by Voight,

claiming he had earned it because of the professional services he rendered at Voight's request, as well as the \$10,000 he had paid to the appellate attorney, Gerstein, with Voight's consent.

Both Steering and Stein later filed complaints against Voight, seeking a determination of their right to retain the fees and costs they believed they had earned on a theory of quantum meruit. The cases were consolidated and following a non-binding mandatory fee arbitration, both attorneys requested a trial de novo.

The trial was held over four days in May-September 2011. Both Stein and Steering testified. The trial court rendered a decision in favor of Stein and Steering. The court specifically rejected Voight's contention the attorneys had abandoned him, and found instead that it was Voight who had terminated the parties' professional relationship when he informed Steering the retainer agreement was void, and instructed him to tear it up. It also found that both Stein and Steering rendered significant professional services to Voight, including visiting him several times in the jail, reviewing several boxes of evidence, and preparing motions. Additionally, the court found Steering rendered services to resolve Mandel's fee claim against Voight on very favorable terms. The court also noted the attorneys produced telephone records which reflected "a very large number of calls between Steering and [Voight]," and that "Stein also testified that he had numerous phone conversations with [Voight.]"

Moreover, the court found that Steering and Stein were instrumental in bringing in Gerstein to file the writ petition, which had successfully delayed the trial and gave Voight additional time to prepare. The court noted that ultimately the trial had been delayed for a period of about two years.

Finally, the court determined \$300 per hour was a reasonable hourly rate for Steering's work, while \$350 per hour was a reasonable rate for Stein's. It found the reasonable value of Steering's services to Voight was \$22,072.42, the exact

amount Steering had claimed. Consequently, the court concluded Voight owed Steering an additional \$1,004.92.

The court found the reasonable value of the services Stein rendered to Voight was \$29,594.14, slightly less than the \$31,000 retainer he had been paid. Thus, Voight was entitled to a refund of \$1,405.86 from Stein. The court decreed that both attorneys were prevailing parties.

## DISCUSSION

### *I. Voight's Motion to Take Additional Evidence Under Code of Civil Procedure Section 909*

Voight has filed a motion asking us to take additional evidence on appeal, pursuant to Code of Civil Procedure section 909 (section 909). The evidence he asks us to consider includes (1) four documents reflecting events in the Mandatory Fee Arbitration conducted between the parties pursuant to Business and Professions Code section 6200 et seq., prior to trial; (2) the reporter's transcripts of hearings held on May 6, 2010, and August 5, 2010, in which Voight explained his inability to comply with discovery requirements to the trial court, and an attorney declaration pertaining to the same issue; and (3) documents relating to alleged discipline previously imposed on Steering and Stein by the State Bar. We deny the motion.

Section 909 provides, in pertinent part: "In all cases where trial by jury . . . has been waived, the reviewing court may make factual determinations contrary to or in addition to those made by the trial court. . . . The reviewing court may for the purpose of making the factual determinations or for any other purpose in the interests of justice, take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal, and may give or direct the entry of any judgment or order and may make any further or other order as the case may require. This section shall be liberally construed to the end among others that, where feasible, causes may be finally

disposed of by a single appeal and without further proceedings in the trial court except where in the interests of justice a new trial is required on some or all of the issues.”

However, as stated by our Supreme Court in *In re Zeth S.* (2003) 31 Cal.4th 396, 405, our authority under section 909 “should be exercised sparingly” and only in “exceptional circumstances.” And “[e]ven when exceptional circumstances exist, appellate courts still are not to exercise their authority to make factual findings *except where to do so will result in the litigation’s termination, either by affirming the judgment or reversing and directing judgment be entered in favor of the appellant.* [Citation.]” (*Bombardier Recreational Products, Inc. v. Dow Chemical Canada ULC* (2013) 216 Cal.App.4th 591, 605, italics added.)

Further, it is generally inappropriate for a party to rely on section 909 as a means of introducing evidence that was already in existence at the time of trial, or evidence that is not conclusive on the issue for which its admission is sought. (*In re Elise K.* (1982) 33 Cal.3d 138, 149; *Phillipine Export & Foreign Loan Gurantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1090 [“The power to take evidence in the Court of Appeal is never used where there is conflicting evidence in the record and substantial evidence supports the trial court’s findings”].)

In this case, all of the additional evidence Voight asks us to consider on appeal already existed at the time of trial. To the extent it is evidence he actually sought to introduce at trial, and it was erroneously excluded, that would present him with a claim of error that should have been preserved for appeal in the ordinary trial record. And if the evidence was never referenced at trial, it cannot be introduced for the first time on appeal as a basis for claiming the trial court’s decision, which is otherwise supported by substantial evidence, was incorrect.

Moreover, Voight has made no showing that any of the evidence he seeks to introduce on appeal would be conclusive on any issue, or would compel a judgment in his favor. For example, he apparently asks us to consider the Mandatory

Fee Arbitration documents in support of a contention that Stein and Steering willfully failed to appear at the arbitration, and thus waived their right to a trial de novo pursuant to Business and Professions Code section 6204, subdivision (a). However, the question of whether a party “willfully” failed to appear at a fee arbitration is a question of fact, and the statute specifies “[t]he determination of willfulness shall be made by the court.” (Bus. & Prof. Code, § 6204, subd. (a).) Thus, even if the arbitration documents reflected Stein and Steering had failed to appear, or further that *the arbitrators themselves* considered the failure to appear improper, that would not bind the trial court on the issue of willfulness. Consequently, Voight’s evidence could not *conclusively* demonstrate Stein and Steering had waived their right to a trial de novo on the fee issue.

There are similar problems with Voight’s other evidence. The reporter’s transcripts of hearings, discovery proceedings, and any declarations filed in the trial court in connection with them, could have been included in the ordinary record on appeal. They are not a proper subject for a motion to take additional evidence on appeal. Moreover, Voight has made no showing that our consideration of those documents would compel a different outcome in this case. And finally, evidence that Stein and/or Steering were subject to State Bar discipline in unrelated matters—even if true—would certainly not be conclusive on the issue of whether they were entitled to recover fees in this case.

Because none of the additional evidence Voight asks us to consider in connection with this appeal is new, and he has made no showing that any of it is dispositive or would compel us to direct entry of a judgment in his favor, we reject his request we take additional evidence pursuant to section 909.

## *II. Claimed Unenforceability of the Retainer Agreement*

Among other contentions advanced on appeal, Voight argues the judgment in favor of Stein and Steering must be reversed because no copy of the fully

executed retainer agreement was provided to him, and thus the agreement is void. The argument is unpersuasive for two reasons: First, Voight provides no authority suggesting the validity of an attorney's retainer agreement turns on whether the client receives a fully executed copy of the agreement, and we are aware of none.

And second, the argument fails because the judgment in this case was based on quantum meruit, and not on the enforceability of the retainer agreement. A claim for quantum meruit exists *in the absence of an enforceable agreement*, when one party seeks to recover the reasonable value of a benefit conferred on another, based on an implied-in-law promise to pay. (*Hedging Concepts, Inc. v. First Alliance Mortgage Co.* (1996) 41 Cal.App.4th 1410, 1419 [“it is well settled that there is no equitable basis for an implied-in-law promise to pay reasonable value when the parties have an actual agreement covering compensation”]; *Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449 [“recovery in quantum meruit does not require a contract”].)

In this case, the trial court concluded the flat-fee retainer agreement entered into between the parties had been terminated by Voight. Consequently, it was appropriate for the attorneys to recover on a theory of quantum meruit for the services they rendered for Voight's benefit.

### *III. Challenges to the Sufficiency of the Evidence*

Several of Voight's contentions amount to challenges to the sufficiency of the evidence. These include: (1) his claim that Stein and Steering's billing records are inadequate to demonstrate the time they claim to have spent on his case; (2) his claim the trial court mischaracterized the termination of the parties' attorney-client relationship; and (3) his claim Stein and Steering used his retainer funds to pay unauthorized expenses.

In considering these claims, we are bound by the usual rules of appellate review: “A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.

[Citations.]” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) And “[w]here the appellant challenges the sufficiency of the evidence, the reviewing court must start with the presumption that the record contains evidence sufficient to support the judgment; it is the appellant’s burden to demonstrate otherwise. [Citation.] The appellant’s brief must set forth all of the material evidence bearing on the issue, not merely the evidence favorable to the appellant, and it also must show how the evidence does not sustain the challenged finding. [Citations.] And the appellant must support all of its factual assertions with citations to evidence in the appellate record. [Citations.] If the appellant fails to set forth all of the material evidence, its claim of insufficiency of the evidence is waived. [Citations.]” (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 369.) Applying those rules, we must reject Voight’s claims.

*A. Sufficiency of the attorneys’ billing records*

Voight contends Stein’s and Steering’s billing records were inadequate to support the time they claim to have spent on his behalf, and that at least one entry is fraudulent. However, in making that contention, he ignores the fact both attorneys also testified in support of their fee claims. That testimony—which in the absence of a contrary showing we must presume was fully supportive of the attorneys’ positions—sufficiently supports their claims.

“[T]here is no legal requirement that an attorney supply billing statements to support a claim for attorney fees. As this court has held, ‘An attorney’s testimony as to the number of hours worked is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records. [Citations.]’” (*Madirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 269.)

Moreover, “[i]t is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial

court. . . . [Citations.] The value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.] The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.’’ (PLCM Group v. Dextler (2000) 22 Cal.4th 1084, 1096.)

As Voight has made no showing that the evidence admitted at trial, taken as a whole, was insufficient to support the trial court’s assessment of the reasonable value of services rendered to him by Stein and Steering, we reject his challenge to the sufficiency of the billing records specifically.

*B. The court’s conclusion Voight terminated the parties’ relationship*

Voight also contends the trial court erred by concluding it was he, rather than Steering and Stein, who terminated the parties’ professional relationship. According to Voight, it was Stein and Steering who abandoned him, pointing out the retainer agreement did not give Stein and Steering the right to condition their representation of him on obtaining a continuance of his scheduled trial. But in making this abandonment argument, Voight ignores the evidence showing that even though Stein and Steering had not formally substituted into his case (which had been stayed), they were continuing to provide him with professional services. That evidence supports the inference they had not abandoned him. Further, Voight ignores the fact it was he who declared the attorneys’ retainer agreement was void and should be torn up.

We conclude the evidence was more than sufficient to support the trial court’s determination that it was Voight, rather than Stein and Steering, who terminated the parties’ professional relationship.

### *C. Voight's authorization of the challenged expenses*

Voight next claims the court erred by allowing Stein and Steering to recover for services and costs not explicitly authorized in the retainer agreement. He points specifically to the cost of employing an investigator, the time spent negotiating a resolution of Mandel's fee claim against him, and the hiring of Gerstein to pursue the petition for writ of mandate. However, as we have already explained, the recovery in this case was based on a theory of quantum meruit, rather than enforcement of the retainer agreement. Thus, the only pertinent question is whether sufficient evidence supports the trial court's determination those services and costs fell within the scope of Voight's implied-in-law promise to pay. It does.

The retainer agreement itself specifies an investigator would have to be retained in connection with Voight's defense in the criminal case, and that Voight would commit "at least several thousand dollars for private investigation services." Additionally, Voight's own February 2006 letter to Steering reflects he understood that and had agreed to the retention. Voight's letter also demonstrates he wanted Steering to deal with Mandel on his behalf, and that he appreciated Steering's efforts in doing so. And finally, not only did Stein testify he paid the \$10,000 to Gerstein with Voight's full knowledge and consent, but Gerstein himself testified he spoke directly with Voight about the writ petition several times. That evidence—whether or not Voight agrees with it—is sufficient to support the trial court's decision to include those services and expenses within the attorneys' quantum merit recovery.

### *IV. Claimed of Error in the Denial of Discovery Motions and Evidentiary Ruling*

Finally, Voight claims the court erred in various discovery rulings, and by refusing to admit certain evidence at trial. However, this argument is unsupported by any clear description of what happened, fails to explain how different rulings would have affected the outcome of the trial, and is devoid of any legal authority or citations to the record. The argument is consequently waived.

“An appellate court is not required to examine undeveloped claims, nor to make arguments for parties.” (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.) Thus, “[w]hen a brief fails to contain a legal argument with citation of authorities on the points made, we may ‘treat any claimed error in the decision of the court . . . as waived or abandoned.’” (*Ellenberger v. Espinosa* (1994) 30 Cal.App.4th 943, 948.) Further, “[i]t is not the duty of a reviewing court to search the record for evidence on a point raised by a party whose brief makes no reference to the pages where the evidence can be found.” (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1011.)

Moreover, “[Voight] is not exempt from the foregoing rules because he is representing himself on appeal in propria persona. Under the law, a party may choose to act as his or her own attorney. [Citations.] ‘[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]’ [Citation.] Thus, as is the case with attorneys, pro. per. litigants must follow correct rules of procedure. [Citations.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

In any event, to the extent we can discern what rulings Voight is concerned about, it is because Stein and Steering acknowledge that in May 2010 the trial court ordered that a series of requests for admission propounded to Voight were deemed admitted. However, Stein and Steering go on to explain that at trial the court ruled those admissions would not be relied upon. Thus, even if the court’s initial discovery ruling were erroneous, as Voight claims, it ultimately caused no prejudice to him.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

O'LEARY, P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.